

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RONALD WAYNE BEALL,

Petitioner,

vs.

JAMES A. BENIDETTE, *et al.*,

Respondents.

2: 10-cv-00189-PMP-RJJ

**ORDER**

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. Petitioner has paid the filing fee in this action. Respondents filed a motion to dismiss this petition on May 6, 2010. (Docket #6.)

On May 14, 2010, petitioner filed a motion for summary judgment. (Docket #11.) Summary judgment is a procedural device available for prompt and expeditious disposition of controversy *without trial* when there is no dispute as to material fact. Petitioner has filed a petition for writ of habeas corpus. “[T]he writ of habeas corpus is not a proceeding in the original criminal prosecution but an independent civil suit.” *Riddle v. Dyche*, 262 U.S. 333, 335-336, 43 S.Ct. 555, 555 (1923); *See, e.g. Keeney v. Tamayo-Reyes*, 504 U.S. 1, 14, 112 S.Ct. 1715, 1722 (1992) (O’Connor, J., dissenting). Modern habeas corpus procedure has the same function as an ordinary appeal. *Anderson v. Butler*, 886 F.2d 111, 113 (5<sup>th</sup> Cir. 1989); *O’Neal v. McAninch*, 513 U.S. 440, 442, 115 S.Ct. 992 (1995) (federal court’s function in habeas corpus proceedings is to “review errors in state criminal trials”(emphasis omitted)). In a habeas proceeding, petitioner does not proceed to “trial.” Therefore, the motion for summary judgment is improper. For all practical purposes, summary judgment is equivalent to the court’s making a determination on the merits of a habeas petition. As the court will rule on the petition for writ of habeas corpus in due course, a motion for

1 summary judgment in a habeas proceeding serves no purpose. Accordingly, the request for  
2 summary judgment will be denied.

3 On May 24, 2010, petitioner filed a pleading entitled, "Motion of Preliminary  
4 Proceedings of Prosecutorial Discretion and Restorative Justice." (Docket #13.) This pleading has  
5 no basis in the Federal Rules of Civil Procedure and presents no discernable legal issue. It will  
6 therefore be denied as frivolous.

7 On May 24, 2010, petitioner filed a motion to amend. (Docket #14.) In that motion,  
8 petitioner provides no explanation as to how or why he wishes to amend his petition. Petitioner also  
9 makes meaningless references to paying a \$350 filing fee. No such fee exists in this case. Petitioner  
10 has already paid the \$5.00 filing fee in this action. Petitioner's motion to amend with therefore be  
11 denied as meritless.

12 On May 24, petitioner filed a motion for a stay. (Docket #15.) In that motion,  
13 petitioner does not explain what kind of stay he wants or why he wants it. Petitioner's motion will  
14 therefore be denied as meritless.


15 **IT IS THEREFORE ORDERED** that petitioner's motion for summary judgment  
16 (Docket #11) is **DENIED**.

17 **IT IS FURTHER ORDERED** that petitioner's motion of preliminary proceedings of  
18 prosecutorial discretion and restorative justice (Docket #13) is **DENIED**.

19 **IT IS FURTHER ORDERED** that petitioner's motion to amend (Docket #14) is  
20 **DENIED**.

21 **IT IS FURTHER ORDERED** that petitioner's motion to stay (Docket #15) is  
22 **DENIED**.

23  
24 DATED: June 18, 2010.

25   
26 PHILIP M. PRO  
United States District Judge